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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/665,179
Filing Date: September 17, 2003
Appellant(s): KOLAR ET AL.

_____

Mr. Christopher P. Moreno Reg. 38,566
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3 December 2010 appealing from the Office

action mailed 7 June 2010.

(1) Real Part of Interest

A statement identifying by name the real part of interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after non-final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Lawlis, et al.; "A Formal Process for evaluating COTS Software Products", (C) 2001 IEEE, Computer, pp.58-63 (hereinafter **Lawlis**)

Mamoukaris et al.; "Evaluation of web-based educational systems", 2000, Vol. 1, Academy of Business Education, pp.1-6 (hereinafter **Mamoukaris**)

KG **Brown** "Using computers to deliver training: Which employees learn and why?" - Personnel Psychology, 2001 - interscience.wiley.com (hereinafter **Brown**)

Murphy, Cheryl; "An evaluation format for "open" software tools", 1995, Computers in Human Behavior, v11, No. 3-4, pp.619-631, (hereinafter **Murphy**)

Matthew Owen **Howard**, R Dale Walker, Patricia Silk Walker, Richard T Suchinsky; "Alcohol and drug education in schools of nursing", Journal of Alcohol and Drug Education. Lansing: Spring 1997. Vol. 42, Iss. 3; pg. 54, 27 pgs, (hereinafter **Howard**).

Richard B. **Freeman**; "Occupational Training in Proprietary Schools and

Technical Institutes", The Review of Economics and Statistics, Vol. 56, No. 3 (Aug.,

1974), pp. 310-318. (hereinafter **Freeman**).

Official Notice

 (9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims: The

ground(s) for rejection are reproduced below from the Final Office Action, mailed 7 June

2010, and are provided here for the convenience of both the Appellant and the Board of

Patent Appeals:

Claim Rejections - 35 USC § 103

3.   The following is a quotation of 35 USC. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this
> title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a
> whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said
> subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4.   **Claims 1-10, 13-20, 31-33 and 43-46** are rejected under 35 USC. 103(a) as

being unpatentable over **Lawlis**, et al.; "A Formal Process for evaluating COTS

Software Products", (C) 2001 IEEE, Computer, pp.58-63 (hereinafter **Lawlis**) in view of

Mamoukaris et al.; "Evaluation of web-based educational systems", 2000, Vol. 1,

Academy of Business Education, pp.1-6 (hereinafter **Mamoukaris**) and further in view

of "Using computers to deliver training: Which employees learn and why?"

KG Brown - Personnel Psychology, 2001 - interscience.wiley.com (hereinafter **Brown**)

and further in view of Official Notice.

Regarding **Claim 5**, Lawlis teaches

An educational product evaluation method comprising:

Page 58 column 1 para 1,

storing business goal rule data;

Page 58 column 1 para 3-4, the RCPEP is a stored evaluation technique for

evaluation of COTS software products.

generating a plurality of educational product alignment values for each of a

plurality of educational products, based on a plurality of associated plurality of

educational product evaluation category values and the stored business goal rule

data;

page 60 Figure 2, values for a plurality of products are generated, based on a

plurality of categories and the rules for applying those categories to the products.

generating, for each educational product of interest, an overall business

alignment value based on the plurality of educational product alignment values;

and

page 60 Figure 2, the sum total of each of the plurality of scores (i.e. an overall

value) based on the single values.

generating an educational product summary containing at least the overall business alignment value for each of the plurality of educational products.

Page 60 Figure 2, the product summary scores for products A, B thru Z (bottom of table) is generated for each product.

Lawlis does not teach where the business goal rule data corresponds to a business organization's goals with respect to employee training. However, the recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP ' 2106.*

Official Notice is taken that it is old and well known in the art for business organization's to have goals with respect to training.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Lawlis to include measuring educational products based on goals that an organization has with respect to training, because it would have provided a predictable result through evaluating software products against an organization's goals for training.

Lawlis teaches the use of numerical metrics to evaluate software, where the software is scored according to scoring rules. Lawlis shows what is known in the art regarding comparing various items against each other through comparing against known standards. Lawlis teaches the use of various criteria for evaluation of a product. However, while Lawlis assigns values to various criteria, Lawlis does not teach where the criteria is used as per:

Wherein each educational product evaluation category value represents at least one of tuition, duration, participant rating or a priority of course with a content area;

Wherein said plurality of educational products includes at least one of an instructor lead face to face course, a self-study course and a virtual course

Mamoukaris teaches the use of criteria for comparing if products meet certain standards and desirability aspects:

Wherein each educational product evaluation category value represents at least one of tuition, duration, participant rating or a priority of course with a content area;

page 4 chart shows participant rating of evaluation of various tools as to their effectiveness in key educational areas (e.g. platform independence, course restrictions, reports of user's progress).

Wherein said plurality of educational products includes at least one of an instructor lead face to face course, a self-study course and a virtual course

Page 3 under section 3, Mamoukaris is evaluating virtual courses.

Lawlis and Mamoukaris both address issues with evaluating software (Lawlis is evaluating general COTS software and Mamoukaris is evaluating aspects of software for distance learning), thus they both are analogous art.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Lawlis, where various software aspects are scored and tallied, to include the teachings of Mamoukaris regarding evaluation of software aspects of distance learning tools, because it would have provided a predictable result in using known numerical techniques of scoring to evaluate the software aspects of distance learning tools.

One of ordinary skill in the art would combine the two references because the substitution of the criteria in Mamoukaris into Lawlis would provide the predictable result of using a known scoring and evaluating technique to show how various software packages related to learning and education are evaluated.

Both Lawlis and Mamoukaris teach comparing something against a target. In Lawlis, there are standards for comparison known in the art of software evaluation against which different software criteria are evaluated. In Mamoukaris, the criteria are evaluated against essentially a 1 or a 0 scare – it either has the desired functionality or it does not. However, Lawlis and Mamoukaris do not teach the intended use limitation

of where the business goal rule data corresponds to a business organization's goals with respect to employee training. However Brown suggests using a standard scoring approach, such as taught by Lawlis and Mamoukaris, to evaluate employee learning (i.e. business goal rule data corresponds to a business organization's goals). See page 282 under at least knowledge).

Thus one of ordinary skill in the art would recognize the advantages of using the result of combining Lawlis and Mamoukaris to include the teachings of Brown such that the scoring approach taught by Lawlis with the educational categories of Mamoukaris would include scoring such that the business goal rule data corresponds to a business organization's goals). The result is a predictable one, that is using the standard scoring approach by Lawlis with Mamoukaris' educational categories provides evaluation along educational category lines. This combination with Brown provides an evaluation of how the educational product meets a business organization's goals with respect to employee training.

Thus the combination is obvious because it provides a predictable combination of what is known in the art.

Regarding **Claim 6**, Lawlis teaches

The method of claim 5 wherein storing the business goal rule data includes storing data representing rules defined for a plurality of desired business goals wherein the business goal rule data represents at least one of: a strategic

importance level, a cost effectiveness level and an educational product impact

level.

Figure 2, "Runs on appropriate platform" is a strategic importance level.

Regarding **Claim 7**, Lawlis teaches

The method of claim 5 including generating the educational product

summary to contain the plurality of educational product alignment values

corresponding to each of the plurality of educational products.

Page 60 Figure 2, the summary contains the product alignment values

corresponding to each of the products A, B…Z.

Regarding **Claim 8**, Lawlis teaches

The method of claim 7 including presenting the educational product

summary for a user.

Figures 2 and 4 teach presenting the product summary to a user.

Regarding **Claim 9**, Lawlis teaches

The method of claim 5 including generating the plurality of educational

product alignment values for each of a plurality of educational products based on

received weighting values associated with each of the plurality of educational

product alignment values.

Page 60 figure 3, each of the ratings assigned to particular metric (i.e. product

alignment values) is based on importance weightings for each of the individual metrics.

Regarding **Claim 10**, Lawlis teaches

The method of claim 5 wherein generating the plurality of educational

product alignment values for each of a plurality of educational products includes

generating a strategic importance alignment value, a cost effectiveness alignment

value and an educational product impact alignment value.

Page 60 Figure 2, "runs on appropriate platform", i.e. a strategic importance

alignment value; "Supports appropriate configurations", i.e. a cost effectiveness

alignment value; and "Online Help Context Sensitive", i.e. an educational product impact

value.

Regarding **Claim 13**, Lawlis teaches

The method of claim 5 wherein storing the business goal rule data includes

providing a cost threshold input interface operative to receive cost thresholds for

different types of educational products.

Page 59 column 1 para 1 and 2, the entering of data into a matrix for scoring (i.e.

an interface for receiving data).

Regarding **Claim 14**, Lawlis teaches

The method of claim 5 wherein storing the business goal rule data includes providing an educational product time input interface operative to receive time threshold data for different types of educational products.

Page 59 column 1 para 1 and 2, the entering of data into a matrix for scoring (i.e. an interface for receiving data).

Regarding **Claim 15**, Lawlis teaches

The method of claim 10 including generating a cost effectiveness alignment value matrix containing at least description data relating to different cost scores and different corresponding time scores.

Page 60 column2 – the use of a matrix shows how different scores in different categories (i.e. cost and time) relate to each other.

Regarding **Claim 16**, Lawlis teaches

The method of claim 7 including generating the education product summary to include corresponding description data for each educational product and for each educational product alignment value for each educational product.

Page 62 Figure 4, the legend in the chart describes description data (i.e. product names) and illustrates the value for each chart.

Regarding **Claim 17**, Lawlis teaches

The method of claim 5 including generating an overall business alignment value range graphic element containing sub ranges corresponding to different degrees of alignment with corresponding business goal rule data.

Figure 4(a), a graphic element with subgroups containing different degrees of alignment with the subrankings.

Regarding **Claim 18**, Lawlis teaches

The method of claim 5 including generating a graphic element illustrating educational product penetration compared to a group of educational products.

Figure 4(c), the different products are compared to each other with respect to various criteria.a

Regarding **Claim 19**, Lawlis teaches

The method of claim 5 including generating an educational product content redundancy map indicating which educational products include subject matter that is pertinent to multiple strategic subject categories.

Figure 4-c, shows which products include various subject matter rankings, i.e. pertinent to multiple strategic subject categories.

Regarding **Claim 20**, Lawlis teaches

The method of claim 10 wherein generating the educational product summary includes providing a graphic element representing the educational product summary including visual coding of the strategic importance alignment value, the cost effectiveness alignment value and the educational product impact alignment value.

Figure 4, the shading of the graph elements provides visual coding of the various categories being ranked.

Claims 1-4, 31-33 and 43-46 recite similar limitations to those addressed by the rejection of **Claims 5-10 and 13-20**, and are therefore rejected under the same rationale.

Furthermore regarding **Claims 31-33 and 43-46**, Lawlis teaches the limitations recited by the apparatus, however Lawlis does not explicitly teach the method being performed on a computer apparatus with memory and various generators as claimed.

However, Official Notice is taken that it is old and well known to perform method steps, such as taught by Lawlis using a computer. This makes the method steps faster and more efficient, since they are running on a computer.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Lawlis, Mamoukaris and Brown to include

performing the method steps on a computer, since it would make the performance of

these steps faster and more efficient since they are running on a computer.

7.   **Claims 11, 12, 21-30, 34-42** are rejected under 35 USC. 103(a) as being

unpatentable over **Lawlis** in view of **Mamoukaris,** in view of **Brown**, in view of **Murphy,**

Cheryl; "An evaluation format for "open" software tools", 1995, Computers in Human

Behavior, v11, No. 3-4, pp.619-631, (hereinafter **Murphy**) and further in view of

Matthew Owen Howard, R Dale Walker, Patricia Silk Walker, Richard T Suchinsky;

"Alcohol and drug education in schools of nursing", Journal of Alcohol and Drug

Education. Lansing: Spring 1997. Vol. 42, Iss. 3; pg. 54, 27 pgs, (hereinafter **Howard**)

and further in view of Official Notice.

Regarding **Claim 11**, Lawlis teaches using a composite scoring system to rate a

software product using various input values, as discussed above, and Lawlis teaches:

The method of claim 10 wherein;

the educational product impact alignment value is based on at least

participant rating data and usage data associated with the educational product

Lawlis further teaches a strategic importance alignment value based on a

strategic importance priority level data of an educational content area (see page 60

Figure 3 – adequacy of specific analysis is data of an educational content area).

Lawlis does not teach where the input values are based upon

course hours for the educational products associated with the educational content area

the cost effectiveness alignment value is based on at least a number of hours per educational product and a cost of the educational product; and

Murphy teaches where the cost of a product as an input factor is important when rating a product (page 624 para 1 under "Cost Effectiveness").

Murphy teaches on page 1 that considering cost is important when considering a software product for higher education (page 619 para 1). Murphy addresses rating software thus Murphy and Lawlis are analogous art.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Lawlis, Mamoukaris and Brown to include rating software based on cost, as taught by Murphy, because it would improve the software rating by taking into account a cost evaluation as an input factor.

Lawlis, Mamoukaris, Brown and Murphy do not teach using course hours associated with the educational content and number of hours per educational product as a rating input.

However, the idea of associating course hours with educational content is old

and well known as a rating or measuring input as shown by Howard. Howard teaches

the using of course hours associated with educational content as a way to measure the

importance of the course in a student's overall curriculum (see page 59 para 2, the

amount of time, i.e. course hours, is used to measure the proportion of time spent in

teaching. The use of hours to measure the importance of an instructional course

provides a predictable result because it is used in comparison to the total number of

hours of instruction.

It would have been obvious to one of ordinary skill in the art at the time of the

invention to modify the teachings of Lawlis, Mamoukaris, Brown and Murphy , regarding

measuring the cost of an educational software product to include where the

measurement is based on the a number of hours per educational product and course

hours for the educational products associated with the educational content area,

because it would include a known way of measuring educational aspects by taking into

account the hours spent on those educational aspects and thus provide a predictable

result through the application of a known metric known in the art.

Regarding **Claim 12**, Lawlis teaches

The method of claim 11 including presenting a content area importance

table that visually differentiates each strategic importance priority level data for

each educational content area.

Page 60 Figures 2 and 3 visually differentiate the data for each software rating area.

Claims 21-30 and 34-42 recite similar limitations to those addressed by Lawlis, Mamoukaris, Brown, Murphy and Howard above, and are therefore rejected under the same rationale.

Furthermore regarding **Claims 34-42**, Lawlis, Mamoukaris, Brown, Murphy and Howard teach the limitations recited by the apparatus, however they do not explicitly teach the method being performed on a computer and using software.

However, Official Notice is taken that it is old and well known to perform method steps, such as taught by Lawlis using a computer and software. This makes the method steps faster and more efficient, since they are running on a computer and encoded in a software program.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Lawlis to include performing the limitations on a computer with software, since it would make the performance of these steps faster and more efficient since they are running on a computer.

Furthermore regarding, Lawlis does not explicitly teach a computer interface per se and a display that presents the output information.

However, Official Notice is taken that providing these elements on a computer are old and well known for the purpose of making the interface with the computer easy to use.

It would have been obvious to modify the teachings of Lawlis to include where the performance of his various steps include a display and interface for entering and seeing the result of the data processing, because it would make the interaction with the computer in performing of the method steps easy to use.

8.   **Claim 47** is rejected under 35 USC 103(a) as being unpatentable over **Lawlis** in view of **Mamoukaris**, in view of **Brown** and further in view of Richard B. Freeman; "Occupational Training in Proprietary Schools and Technical Institutes", The Review of Economics and Statistics, Vol. 56, No. 3 (Aug., 1974), pp. 310-318. (hereinafter **Freeman**).

Regarding **Claim 47**, Lawlis and Mamoukaris teach collectively providing an evaluation of various aspects of software. Lawlis teaches constraints (i.e. business goal rule data) for evaluating software where those constraints provide evaluation of certain

metrics where the evaluation is based on a numerical threshold. Lawlis and

Mamoukaris do not teach where the constraints (i.e. the business goal rule data):

includes at least a course duration limitation limiting the number of days a

week an employee can participate in a course given required job related

activities.

Freeman teaches the concept of limiting the number of days a week an

employee can participate in a course given required job related activities (see page 312

column 1 para 2, here Freeman discusses the limitation that schools place on courses

for those who are working (i.e. given their required job responsibilities). Freeman

teaches that this is a quantifiable measure for those who are working and going to

school (see footnote on same page). (The examiner notes that Freeman teaches in

different hours per week per student, rather than number of days, but Official Notice is

taken this difference would be recognizable to one of ordinary skill in the art at the time

of the invention as an obvious variant of the hours per week per student).

It therefore would have been obvious to one of ordinary skill in the art at the time

of the invention to modify the teachings of Lawlis, Marmoukaris and Brown, regarding

using quantifiable metrics to measure educational products, to use a measure of course

duration limitation limiting the amount of time that a student can participate in a course

as a quantifiable metric, because it would have provided a predictable result in

measuring aspects of an educational course.

(10) Response to Argument

The applicant's arguments have been fully considered but they are not persuasive.

The applicant argues that the cited references fail to teach "business goal rule data representing a business organization's goals with respect to employee training".

The examiner respectfully disagrees.

First, there's no positive recitation in the claim that the business goal rules are in fact formulas that are used to evaluate software. The claims cite that the evaluation is performed (i.e. a plurality of alignment values are generated) "based on the business goal rules". This reliance is indefinite because it is not clear how the generation is "based on the business goal rules". For purposes of examination, the examiner notes that Lawlis generates values for software evaluation that are as "based on business goal rules" as is claimed by the instant application.

For purposes of argument, lets assume that the formulas the applicant is relying on were in fact recited in the claims. Figure 10 shows this:

EDUCATIONAL PRODUCT ID	EDUCATIONAL PRODUCT TOTAL HOURS	CUSTOMER CONTACT TRANS-FORMATION	FINANCE & ACCOUNTING OUTSOURCING	HUMAN CAPITAL TRANS-FORMATION	INFORMATION TECHNOLOGY OUTSOURCING	OPERATIONS/BACK OFFICE SOLUTIONS	PROCUREMENT SOLUTIONS	INSIGHT DRIVEN MARKETING	ENTERPRISE SOLUTIONS (ENTERPRISE RESOURCE PLANNING (ERP))	IT TRANSFORMATION	CIO FOCUSED TECHNOLOGY OFFERINGS	STRATEGIC IMPORTANCE ALIGNMENT VALUE (RAW DATA)	FORMULA IS
THESE EDUCATIONAL PRODUCTS MAP TO THE SAME OFFERING (PRODUCT(S)/SERVICES)													
FINANCIAL BASICS	8		4								4	8	(4*1)+(4*1)(8*3)
HOW FINANCE WORKS	16		8		4						4	12	(8*1)+(4*1)+(4*1)(16*3)
FINANCE IN OUR BUSINESS	24		4								20	24	(4*1)+(20*1)(24*3)
THESE EDUCATIONAL PRODUCTS MAP TO THE SAME PRODUCT AND SERVICES													
BILLING 101	16				8				8				(8*1)+(8*3)(16*3)
ACCOUNTS RECEIVABLE PRIMER	2				1				1				(1*1)+(1*3)(2*2)
INTRODUCTION TO BILLING SYSTEMS	40				10				10				(10*1)+(10*3)(40*3)
BEST PRACTICES FOR CUSTOMER BILLING	24				4				4				(4*1)+(4*3)(24*3)

FIG. 10

Figure 10 is a table showing how scores in different areas are combined according to a

weighted average scheme illustrated in the last column under "formulas". Furthermore

the specification also notes that the "business rules" for scoring software is illustrated by

the following section (para 56) of the specification:

[0056]   The business goal rule data 18 may include, but is not limited to, stored

formulas, functions, or other relationships as desired. In addition, business goal rule

data 18 may include threshold data associated with costs, or any other strategic

alignment categories. In this example, as shown in block 618, business goal rule data

is used to generate the cost effectiveness alignment value and may be obtained by

providing a cost threshold interface. The cost threshold interface 1100 (shown in

FIG. 11) is presented on the display. The cost threshold interface cost thresholds for

different types of educational products. For example, different types of educational

products may include face-to-face course offerings, self-study course offerings,

virtual course offerings or other different types of educational products. To illustrate,

a user may enter the cost thresholds for three different cost thresholds for each given

educational product type as shown in FIG. 11. By way of example, for a face-to-face

classroom course, a user may determine that if course tuition data 332 falls within a

range of 0 up to $1,800.00, a corresponding cost score 1602 of 3 is associated

therewith; whereas if a course tuition data 332 is between $1,800.00 to $2,100.00 an

intermediate score of 2 is provided. The cost threshold input interface 1100 visually

codes the corresponding cost score for given threshold ranges. This is done for a

plurality of different types of educational products. This received business goal rule

data is then stored for comparison to actual costs of educational products being

evaluated.

What is being discussed above is that in scoring, the business goal rule data sets

forth how, for example, if tuition falls within a certain range, that a score of "2" is given.

What is being described is a set of rules for scoring (i.e. business goal rules) where

scores are given based on certain thresholds being applied.

What does Lawlis teach in terms of scores being applied? On page 58 column 2

para 2 Lawlis teaches that it is necessary to apply the same set of standards to evaluate

products so that meaningful comparisons can be made. Lawlis is explicit that the same

set of standards must be applied by the same evaluator to the same product to ensure

that products are judged according to the same set of standards. While this section of

Lawlis could be interpreted to imply that there should be a set of scoring rules in the

same way that that applicant's own specification defines rules (i.e. a set of thresholds

for determining what scores are), this section of Lawlis stops short of actually

suggesting thresholds in the context of rules for determining scoring. However, reading

Lawlis further it is shown on page 59 column 1 para 3 the section:

> Based on user inputs, analysts assign numerical
> weights ranging from 0 to 10 to each requirement to
> distinguish levels of importance. The more important
> a requirement, the higher its number. Because the
> weights are estimates, only single digits of precision
> are used. Analysts also assign numerical values to
> each requirement indicating the breadth of coverage
> for the candidate products. Requirements receive a 1
> for full coverage, 1/2 for partial coverage, and 0 for
> no coverage.

The last sentence indicates that Lawlis teaches a threshold scheme (i.e. rules

being applied for scoring) that provide scores (e.g. a 0, 1 or ½) based on thresholds

being applied to the particular attribute that is being evaluated and scored. This

threshold scheme for scoring (i.e. if the attribute being scored is between this and this value, then it get's a "1/2"), is exactly the same as what the applicant defines in their own specification.

So, not only does Lawlis teach business goal rule data for generating values for evaluating software, Lawlis teaches the application of that business goal rule data in the same way that is disclosed in the applicant's own specification.

The recitation in the claims the applicant is arguing, i.e. that the data "representing a business organization's goals with respect to employee training", is merely intended use for the "business goal rule data". This limitation does not patentably distinguish over Lawlis because it is mere intended use of the "business goal rule data". As shown above, Lawlis' "business goal rule data" for scoring functions exactly as the applicant's invention.

In the final rejection, the examiner noted that this limitation (i.e. representing a business organization's goals with respect to employee training) was an intended use limitation (i.e. non functional descriptive material). However, the examiner took Official Notice that it is old and well known for an organization to have goals with respect to training. Thus the combination of the business goal rule data, as taught by Lawlis and discussed above, with what is old and well known regarding organization's having goals with respect to training provides the use of the business goal rule data to evaluate software regarding it's meeting an organization's needs with respect to employee training. While the applicant argues that the subject of the Official Notice "misses the

point", it is the combination of the Official Notice and the teachings of Lawlis that render
the claimed limitation obvious.

The applicant argues that the teaching of Brown addresses a student's
performance with respect to training, but not a business organization's goals with
respect to employee training.

The examiner respectfully disagrees.

The individual's being evaluated as to their learning on a computer course in
Brown are "trainees" for a company (page 280 bottom). The purpose of Brown's
research is to understand which individual's benefit the most of computer based training
and why (page 273 para 3). One of ordinary skill in the art would understand that an
organization's goals with respect to employee training has an essential element of how
well individuals do when they are being trained (e.g. did they learn the material, is the
course effective, etc. etc.). In other words a student's performance with respect to
training supports and totally is in line with a business organization's goals with respect
to employee training.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the

Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

February 6, 2011

/Jonathan G. Sterrett/

Primary Examiner, Art Unit 3623

/Scott L Jarrett/
Primary Examiner, Art Unit 3624

/Vincnt Millin/

Appeals Practice Specialist